IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.588 OF 1988

1. Shri Shankar Yeshwant Paygude)
age 55 yrs. Occ. Agri.)

2. Shri Mahadeo Yeshwant Paugude)
age 50 yrs. Occ. Agri.)

3. Shri Raghunath Ganpat Paygude)
age 39 yrs. Occ. Agri.)

4. Shri Anil Ganpat Paygude)
age 26 yrs. Occ. agri.)

5. Mrs.Mangal Thakaram Hande)
age 20 yrs. Occ. Household)
all residing at Shivane,)
Tal. Haveli, Dist.Pune.).....Appellants
(Org.Defendants)

Versus

1. Shri Suresh genba Dangat)
age 46 yrs. Occ. agri.)

2. Shri Badrinarayan Ramnarayan Rathi)
deceased thrugh heirs)

2A Smt. Sairabai Badrinarayan Rathi)
age 55 yrs. Occ. household)

2B Shri Sham Badrinarayan Rathi)
age__ yrs. Occ. business)

2C Shri Ishwar Badrinarayan Rathi)
age 33 yrs. Occ. Business)

All residents of Shivane, Taluk)
Haveli, Dist. Pune.)

2D Mrs.Saraswatibai Sureshchandra)
Baheti, age 36 yrs. Occ. household)
resident of Paithan,Dist.Aurangabad)

2E Mtrs.Rajkuvar Shamsunder Jakhoriya)
age 35 yrs. Occ. Household, residing)
at Parashakunth Ahmednagar.)

3. Sonu Gopala Shinde, deceased thoruhg)
heirs)

3A Shri Raoba Sonu Shinde)
adult, resdident of Shivane,)
Tal. Haveli, Dist.Pune.)...Respondent
(Nos.1 to 2 org.
(Plfs., No.3
org. Deft.No.7)

Mr.S.J.Rairkar for appellants

Ms.Lalita Panchakshri for respondent no.1

Mr.A.V.Anturkar for respndent nos.2A to 2E and 3A

CORAM : P.V.KAKADE, J.

DATE : 29TH JUNE, 2005.

P.C.:

1. This appeal was preferred against the judgment and order passed by Addl. District Judge, Pune dismissing the appeal and confirming the order passed by lower court in suit for partitions which was decreed.

2. The record shows that the appeal is dismissed

against Respondent No.3A as per order dated 13.9.2001 and no steps are taken in that regard. Similarly appeal is abated against Respondent No.2A as per order dated 18.3.2005. Respondent No.1 as well as Respondent Nos.2E and 3A are on record. The Respondent No.2B and 2D are served but have not appeared. It is needless to mention that the appeal involving the decree of partition cannot be proceeded unless all the sharers are before the court in order to adjudicate the dispute in proper and legal manner. No steps are seen to have been taken regarding brining the legal heirs of the said parties within time. The learned counsel for the appellant submits that he had tried to contact the instructing advocate, however he could not get instructions to file application for bringing the legal heirs on record. Be as it may, the fact remains that the matter cannot proceed unless all the parties are present before the court against whom the earlier orders are passed.

3. In the result the appeal is rendered infructuous and stands disposed of without any order as to costs.

. Consequently Civil Application No.5324 of 1989 also stands dismissed without any order as to costs.

4. It may also be noted that Advocate Mr.V.B.Rajure, who is present in the court, submits that he was representing the appellants earlier, however, thereafter Advocate Mr.Rairkar superseded him and therefore Mr. Rajure request for formal order of his discharge. Mr.Rajure stands discharged.

******